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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF WV

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA**

In re	)	Bankr. No. 03-01802
	)	
Weirton Steel Corporation,	)	Chapter 11
	)	
Debtor.	)	Hon. L. Edward Friend II
	)	United States Bankruptcy Judge

JOINT MOTION OF J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE OF AND COLLATERAL AGENT WITH RESPECT TO EACH OF (1) THE 10% SENIOR SECURED NOTES DUE 2008; AND (2) SECURED POLLUTION CONTROL REVENUE REFUNDING BONDS DUE 2012, AND THE INFORMAL COMMITTEE OF SENIOR SECURED NOTEHOLDERS TO AMEND FINAL ORDER AUTHORIZING DEBTOR TO: (A) INCUR POSTPETITION DEBT; AND (B) GRANT CERTAIN LIENS AND PROVIDE SECURITY, ADEQUATE PROTECTION, AND OTHER RELIEF TO FLEET CAPITAL CORPORATION, AS AGENT, AND JP MORGAN TRUST COMPANY, NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE

J.P. Morgan Trust Company, National Association ("Trustee"), as indenture trustee of and collateral agent with respect to each of (1) the 10% Senior Secured Notes (the "Senior Secured Notes") and (2) the Secured Pollution Control Revenue Refunding Bonds Due 2012 (the "Bonds" and together with the Senior Secured Notes, the "Obligations"), each being obligations of Weirton Steel Corporation (the "Debtor"), and each dated as of June 18, 2002, and the Informal Committee of Senior Secured Noteholders (the "Informal Committee" and together with the Trustee, the "Movants"), by their undersigned counsel, hereby submit their *Joint Motion of J.P. Morgan Trust Company, National Association, as Indenture Trustee of and Collateral Agent with Respect to Each of (1) the 10% Senior Secured Notes Due 2008; and (2) Secured Pollution Control Revenue Refunding Bonds Due 2012, and the Informal Committee of Senior Secured Noteholders to Amend Final Order Authorizing Debtor to: (A) Incur Postpetition Debt; and (B) Grant Certain Liens and Provide Security, Adequate Protection, and Other Relief to Fleet Capital Corporation, as Agent, and J.P. Morgan Trust Company, National Association, as Indenture Trustee* (the "Motion"). In support of their Motion, the Movants state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

4. The relief sought by this Motion is authorized pursuant to Sections 105(a), 361, 363, 364, 503(a), and 507(b) of the Bankruptcy Code.

BACKGROUND

5. On May 19, 2003 (the "Petition Date"), the Debtor filed a voluntary petition in the United States Bankruptcy Court for the Northern District of West Virginia, under Chapter 11 of the Bankruptcy Code.

6. On June 4, 2003, Movants filed their *Joint Motion for Adequate Protection* (the "Adequate Protection Motion").

7. On June 16, 2003, the Court entered the *Final Order Authorizing Debtor to: (A) Incur Postpetition Debt; and (B) Grant Certain Liens and Provide Security, Adequate Protection, and Other Relief to Fleet Capital Corporation, as Agent, and J.P. Morgan Trust Company, National Association, as Indenture Trustee* (the "Final DIP Order"). Pursuant to the Final DIP Order, as adequate protection for the Trustee and the holders of the Obligations (the "Noteholders"), the Court granted them, *inter alia*, properly perfected replacement liens on substantially all of the Debtor's assets with the exception of the Exchange Indenture Collateral, as defined in the DIP Financing Agreement. Final DIP Order at ¶9.

8. The Final DIP Order also provides for the payment of both the Trustee's and the Informal Committee's professional fees from a carveout. Final DIP Order at ¶4

9. Pursuant to the definitions set forth on Exhibit "A" to the Final DIP Order, the Trustee's professionals include, "the [Trustee], Reed Smith LLP, and any other professionals (other than a financial advisor) employed by the [Trustee] ..." However, the Trustee specifically reserved the "right to seek, at some later date, to retain a financial advisor." Final DIP Order Exhibit "A" ¶25. The reservation of rights set forth in the definition of the Trustee's professionals also appears in the definition of the Informal Committee's professionals. See Final DIP Order Exhibit "A" ¶18.

RELIEF REQUESTED

10. By this Motion, the Movants seek to exercise their reserved right to employ a financial advisor and to amend the Final DIP Order by increasing the amount of their respective careveouts to cover the fees, costs and expenses of their financial advisor.

11. As reflected in paragraphs 18 and 25 of Exhibit "A" to the Final DIP Order, the Trustee and the Informal Committee advised the Debtor as well as other parties in interest that they anticipated the need to secure the services of a financial advisor at some point, but in order to preserve the assets of the estate to the greatest extent possible, the Trustee and the Informal Committee agreed not to do so until it was absolutely necessary.

12. As currently proposed, the Debtor's Plan of Reorganization Dated October 7, 2003 (the "Plan") impairs the rights of the Movants. Movants now require the assistance of a financial advisor to understand and evaluate the feasibility and confirmability of the proposed Plan, as well as the value of their collateral.

13. The Movants have selected Imperial Capital, LLC and Hatch Consulting (collectively, "IC/Hatch") as their financial advisors because of their extensive financial advisory experience as well as their extensive experience in assessing the operating structure of integrated

steel mills, including the quality of fixed assets. IC/Hatch are being retained to provide financial advisory services to the Movants in connection with, *inter alia*, the analysis, consideration, and evaluation of the Plan and any viable alternatives thereto (a "Restructuring").

14. In summary, the Movants have determined that they require the assistance of IC/Hatch to provide the following services:

a. analysis of the Debtor's operations, business strategy, and competition in each of its relevant markets;

b. analysis of the Debtor's financial condition, operating forecasts, and management;

c. financial valuation of the ongoing operations of the Debtor;

d. assist the Movants in developing, evaluating, structuring and negotiating the terms and conditions of a potential restructuring plan, including the value of the securities, if any, that may be issued to the Noteholders;

e. analysis of potential divestitures by the Debtor; and

f. provision to the Movants of other and further financial advisory services with respect to the Debtor's financial issues as may arise during the course of the restructuring as requested by the Movants.[1]

COMPENSATION

15. As set forth with greater specificity in the IC/Hatch engagement letter (the "Engagement Letter"), a true and correct copy of which is attached hereto as Exhibit "1," and subject to this Court's approval, IC/Hatch will be paid a financial advisory fee of $100,000.00 per month, payable each month in advance on the first day of each month beginning October 1,

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1 The advisory services and compensation arrangements set forth herein, and more fully in the Engagement Letter, do not encompass other investment banking services such as the exclusive sale or disposition of assets, the raising of capital, the issuance of "fairness opinions," or any other specific transaction not set forth above or in Paragraph One of the Engagement Letter. To the extent of any conflict between this Motion and the terms of the Engagement Letter, the terms of the Engagement Letter control.

Continued on following page

2003 (the "Monthly Advisory Fee"). The Monthly Advisory Fee will continue no longer than seven consecutive months, or through April 2004.

16. Additionally, IC/Hatch will be paid a transaction fee (the "Transaction Fee"), payable upon consummation of the Restructuring of the Obligations. The Transaction Fee shall be payable as follows: 1% of the Total Consideration[2] received by the Noteholders less an amount representing a recovery by the Noteholders of 30% of the principal amount outstanding of the Obligations, whether such recovery is received pursuant to any plan of reorganization of the Debtor or in an asset sale. The Transaction Fee is payable in the same form of consideration as is received by the Noteholders in the Restructuring. The Transaction Fee shall be reduced by all Monthly Advisory Fees after the third month of the engagement. Under all circumstances IC/Hatch will not receive less than the aggregate Monthly Advisory Fee earned.

17. IC/Hatch also will be reimbursed for all reasonable out-of-pocket expenses (the "Expenses") incurred in connection with this engagement, including, but not limited to, its own accounting and legal fees, printing and travel costs, which are payable as and when the Monthly Advisory Fees are paid.

18. The Movants have agreed to engage IC/Hatch on a monthly fee rather than an hourly fee basis because the Movants believe that the value and ultimate benefit that will be provided by IC/Hatch cannot be properly measured on an hourly basis. Rather, the Movants, in negotiating the amount and structure of the fees to be paid, focused on IC/Hatch's expertise, the

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2 For purposes of this Motion and the Engagement Letter, "Total Consideration" shall be defined as all consideration received by the holders of the Notes, including but not limited to: cash; the principal amount of debt securities received; any equity securities received (the value of which shall be agreed to by the Movants, the Trustee and IC/Hatch); and any other assets or distributions received (the value of which shall be agreed to by the Movants, the Trustee and IC/Hatch) by the holders of the Notes.

time commitment required by the engagement, and the complexity of the tasks they are being engaged to perform. Moreover, Imperial Capital, LLC does not accept restructuring engagements on an hourly basis.

19. At such time as the Debtor has obtained formal acceptances of a Plan sufficient under Section 1126 of the Bankruptcy Code for such Plan to be confirmed pursuant to Section 1129 (including through the use of the cramdown procedures of Section 1129(b)), IC/Hatch thereupon shall have completed all of the work contemplated to be performed pursuant to Paragraph 2(ii) of the Engagement Letter and the Transaction Fee shall have been earned in full; *provided, however*, that the Transaction Fee payable under Paragraph 2(ii) of the Engagement Letter shall be payable either upon confirmation of any Plan or upon the closing of an asset sale, as the case may be.

20. Finally, pursuant to the terms of the Engagement Letter, the Movants have agreed to seek indemnification of IC/Hatch pursuant to the terms set forth on Schedule I of the Engagement Letter (the "Indemnification"). The Court has previously allowed the indemnification of other professionals in this case, including but not limited to, Houlihan Lokey Howard & Zukin Capital, CIBC World Markets Corp. and McDonald Investments, Inc. The Movants submit that the terms of the Indemnification are in compliance with this Court's October 1, 2003 General Order Relating to Retention of Professionals (the "General Order"). However, to the extent the terms of the Indemnification and the General Order conflict, the Movants and IC/Hatch recognize that the General Order controls.

21. The Movants believe that the indemnification of IC/Hatch, as well as the terms of the engagement as a whole, are customary and reasonable for financial advisor engagements both in and out of bankruptcy.

22. The Movants request that the Final DIP Order be amended to allow for the compensation and indemnification of IC/Hatch as of September 26, 2003, as this is the date on which IC/Hatch began working and the date on which they exposed themselves to potential liability in connection with this engagement.

23. Accordingly, Movants respectfully request that the Court amend the Final DIP Order effective as of September 26, 2003, and provide them with additional adequate protection by: (1) expanding the their respective carveouts to encompass the IC/Hatch fees, costs and expenses as described herein, and as more fully set forth in the Engagement Letter; and (2) indemnify IC/Hatch pursuant to the terms of the Indemnification.

24. IC/Hatch will submit invoices and receive compensation in accordance with the procedures set forth in the Final DIP order, which are applicable to the Trustee's and the Informal Committee's professionals.

25. The services rendered by IC/Hatch will neither overlap nor duplicate the services rendered by any other professionals employed by the Debtor, the Committee of Unsecured Creditors, or any other entity participating in this chapter 11 case. In this respect, IC/Hatch will coordinate its services, as appropriate, with the services of other professionals retained in this case in order to avoid unnecessary duplication of effort.

NOTICE

26. Notice of this Motion has been given to the Debtor, the United States Trustee, the Unsecured Creditors Committee, other parties in interest, and filed with the Court.

NO PRIOR REQUEST

27. No previous application for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Movants respectfully request entry of an Order in the form attached and granting of such other and further relief as is just and proper.

Dated: October 24, 2003

Respectfully submitted,

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